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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation; Plaintiff, vs. GERALD ARMSTRONG and DOES 1 through 25, inclusive, Defendants.	Case No. BC 052395 PLAINTIFF'S OPPOSITION TO DEFENDANT'S DEMURRER TO PLAINTIFF'S FIRST AMENDED COMPLAINT DATE: July 2, 1992 TIME: 8:30 a.m. DEPT: 30 DISCOVERY CUTOFF: None MOTION CUTOFF: None TRIAL DATE: None

Plaintiff, Church of Scientology International ("plaintiff" or "Church") hereby opposes the demurrer to its First Amended Complaint ("the Complaint") interposed by defendant Gerald Armstrong ("Armstrong").

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TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. STATEMENT OF FACTS 2

III. THE AGREEMENT IS ENFORCEABLE, LEGAL, AND DOES NOT VIOLATE ANY PUBLIC POLICY 4

A. The Agreement is Legal 5

B. The Agreement Does Not Violate Public Policy 7

C. The Agreement Does Not Contravene the First Amendment . . . 12

D. The Agreement Is Not Vague Or Ambiguous And Is Specifically Enforceable 13

E. There is No Requirement That a Contract Contain Reciprocal Non-Disclosure Provisions 15

IV. CONCLUSION 15

TABLE OF AUTHORITIES

Page(s)

CASES

Allen v. Jordanos, Inc.
(1975) 52 Cal.App.3d 160, 125 Cal.Rptr. 31 . . . . 9, 10

Bovard v. American Horse Enterprises
(1988) 201 Cal.App.3d 832, 247 Cal.Rptr. 340 11

Brown v. Freese
(1938) 28 Cal.App.2d 608, 83 P.2d 82 9

D.H. Overmyer Co. v. Frick Co.
(1972) 405 U.S. 174, 92 S.Ct. 775, 31 L.Ed.2d 124 12

Eggleston v. Pantages
103 Wash. 458, 175 P. 34 10

Eichholtz v. Nicoll
(1944) 66 Cal.App.2d 67, 151 P.2d 664 5

Fong v. Miller
(1951) 105 Cal.App.2d 411 11

Hoffman v. United Telecommunications, Inc.
(D.Kan. 1988) 687 F.Supp. 1512 . . . . 6, 12

In Long Beach Drug Co. v. United Drug Co.
(1939) 13 Cal.2d 158, 88 P.2d 698 14

In re Steinberg
(1983) 148 Cal.App.3d 14, 195 Cal.Rptr. 613 12

ITT Telecomm Products Corporation v. Dooley
(1989) 214 Cal.App.3d 307, 262 Cal.Rptr. 773 12

Kallen v. Dlug
(1984) 157 Cal.App.3d 940, 203 Cal.Rptr. 879 11

Larwin-Southern California, Inc. v. JGB Investment Co.
(1979) 101 Cal.App.3d 626, 162 Cal.Rptr. 52 15

Mary R. v. B. & R. Corp.
(1983) 149 Cal.App.3d 308, 196 Cal.Rptr. 871 . . . . 10, 11

Maryland Casualty Co. v. Fidelity & Casualty Co. of New York
(1925) 71 Cal.App. 492 7

McLean v. Church of Scientology of California
(11th Cir. 1991) 6, 12

Moran v. Harris
(1982) 131 Cal.App.3d 913, 182 Cal.Rptr. 519 8

People v. Dean Richard Pic'l
(1982) 31 Cal.3d 731 11

Phelps v. Kozakar
(1983) 146 Cal.App.3d 1078, 194 Cal.Rptr. 872 8

Pic'l. Precision Instrument Manufacturing Co. v. Automotive Maintenance
(1945) 324 U.S. 806 11

Quan v. Kraseman
(1948) 84 Cal.App.2d 633, 191 P.2d 16 5

Russell v. Soldinger
(1976) 59 Cal.App.3d 633, 131 Cal.Rptr. 145 11

Stephens v. Southern Pacific Co.
(1895) 109 Cal. 86, 41 P. 783 8

Thayer Plymouth Center, Inc. v. Chrysler Motors Corp.
(1967) 255 Cal.App.2d 300, 63 Cal.Rptr. 148 13

Trump v. Trump
(1992) ___ N.Y. 2d. ___ 13

Vicki Aznaran, et al. v. Church of Scientology of California, et al.,
U.S.D.C. Central District of California, No. CV 88-1786 (Ex) 3

Wakefield v. Church of Scientology of California
(11th Cir. 1991) 938 F.2d 1226 . . . . 5, 12

Williamson v. Superior Court
(1978) 21 Cal.3d 829, 148 Cal.Rptr. 39 9

STATUTES

California Penal Code §136.1 12

OTHER AUTHORITIES

1 Witkin Summary of Cal. Law (9th ed. 1987) § 228 et seq. 15

I. INTRODUCTION

By its Complaint, the Church seeks damages for breaches by Armstrong of the "Mutual Release of All Claims and Settlement Agreement" entered into between the parties in December, 1986 (the "Agreement"), as well as a permanent injunction prohibiting further breaches of the Agreement. In support of his demurrer, Armstrong does not argue that the Church failed to allege the necessary elements of its claims. Rather, Armstrong argues that the Complaint is demurrable because the underlying Agreement violates "public policy" or is "illegal." These are the same specious arguments made by Armstrong in opposing the Church's motion for preliminary injunction, supported by the same miscited case law, and backed by the same vituperative rhetoric. After full briefing, and two days of oral argument, this Court, the Honorable Ronald Sohigian presiding, entered a preliminary injunction which substantially granted the relief requested by the Church. [Plaintiff's Request for Judicial Notice ("Request"), Exhibit A] Judge Sohigian specifically rejected Armstrong's efforts to invalidate the Agreement, holding,

> The law appropriately favors settlement agreements. Obviously, one limitation on freedom of contract is "public policy"; in determining what the scope of the public policy limitation on the parties' rights to enforcement of their agreement in the specific factual context of this case, the court has weighed the [five] factors referred to in the first sentence of this section. Litigants have a substantial range of contractual freedom, even to the extent of agreeing not to assert or exercise rights which they might otherwise have. The instant record shows that plaintiff was substantially compensated as an aspect of the agreement. . . .[1]

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[1] The factors considered by the Court were: "(a) the protectable interests of the parties to this suit; (b) the protectable interests of the public at large; (c) the goal of attaining full and impartial justice through legitimate and properly informed civil and criminal judicial proceedings and arbitrations; (d) the gravity of interest involved in what the record demonstrates defendant might communicate in derogation of the contractual language; and (e) the reasonable interpretation of the [Agreement]." Id. p. 3.

Id. at 3. Just as the evidence presented at the preliminary injunction hearing demonstrated overwhelmingly that Armstrong, fully represented by counsel of his own choosing, entered into the Agreement, accepted a substantial settlement amount, and, three years later, repeatedly breached the Agreement, so the Complaint itself states not one, but twelve fully cognizable claims against Armstrong. As demonstrated below, the Agreement is legal, valid and enforceable; its terms are fair, just and reasonable, and the Church has so pled. Armstrong's demurrer should be overruled, and Armstrong and his counsel sanctioned for their repetitive and specious abuse of the processes of the Court.[2]

II. STATEMENT OF FACTS

The relevant facts, as alleged in the Complaint, are as follows:

In December, 1986, the Church sought to end a period of long and bitter harassment and attack from former-member Armstrong. Armstrong, who had been expelled from the Scientology religion after stealing confidential documents belonging to the religion's Founder, L. Ron Hubbard, entered into a campaign of activities, both overt and covert, intended to divide Church members from the ecclesiastical leaders of the Church, forge incriminating documents and plant them in Church files, stage a raid on Church facilities by government officials on the basis of the forged documents planted in Church files, get Church members to disaffect and file lawsuits against the Church on the basis of naked allegations insupportable by any evidence or, in Armstrong's own words, "we don't have to prove a goddamn thing. We don't have to prove s---; we just have to allege it." [Complaint, ¶¶ 10, 12]

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[2] Because Judge Sohigian had already heard substantial argument on the identical issues raised by Armstrong's demurrer, the Church offered to stipulate to the hearing of the demurrer by Department 88, so as not to further tax the resources of the Court. Armstrong refused.

Armstrong's bitter and lengthy campaign was ended, or so Church members thought, when he entered into a confidential Settlement Agreement (the "Agreement") with the Church in 1986. The terms of the Agreement required Armstrong not merely to end his own litigation against the Church, but among other things, also required Armstrong to refrain from aiding others in litigation, to return to the Church the documents which he had stolen and all copies of them, to refrain from discussing with third parties his experiences with the Scientology faith, and to keep confidential all terms of the Agreement itself. [Id., ¶10; the Agreement, Exhibit A to the Complaint, ¶¶ 7(D), 7(E), 7(G), 7(H), 7(I) and 10] This amicable settlement was achieved only after careful and extensive negotiations. [Complaint, ¶¶ 8 - 9]

Armstrong received a portion of a total settlement paid to his attorney, Michael Flynn, in a block settlement concerning all of Mr. Flynn's clients who were in litigation with any Church of Scientology or related entity. The substantial amount paid to Armstrong by Flynn was fair, just and reasonable. [Id., ¶¶ 13-16]

Unfortunately, an amicable separation was not to be. Despite carefully drawn provisions of the Agreement, agreed to by both Armstrong and his attorney, Armstrong has brazenly embarked on a second zealous campaign of hatred aimed at the Church. Since June, 1991, Armstrong has, by his own admissions:

- Provided aid to anti-Church litigants Vicki and Richard Aznaran[3] and Joseph Yanny[4] by giving them declarations which purport to describe Armstrong's experiences with Scientology, and which attach copies of documents that Armstrong agreed to keep confidential, including copies of the Agreement; [Id., ¶¶ 28 - 30, 37]

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[3] Vicki Aznaran is the former president of another entity affiliated with the Scientology faith, Religious Technology Center. She and her husband Richard, a former employee of the plaintiff Church, are involved in litigation against plaintiff and other Church parties, Vicki Aznaran, et al. v. Church of Scientology of California, et al., United States District Court for the Central District of California, No. CV 88-1786 JMI (Ex).

- Performed paralegal services for Yanny, Ford Greene and John Elstead, all lawyers for the Aznarans, in the Aznarans' case; [Id., ¶¶ 21 - 24, 34];

- Provided "expert legal witness" services to John Elstead in yet another case, including substantial testimony about his purported experiences with the Church without subpoena; [Id., ¶¶ 47-52];

- Provided paralegal services to attorney Toby Plevin in the case of Corydon v. Church of Scientology International, LASC No. C 694401; [Id., ¶ 64] and

- Held a press conference and gave press interviews in violation of the express non-disclosure provisions of the Agreement in March, 1992. [Id., ¶¶ 40 - 41, 44]

III. THE AGREEMENT IS ENFORCEABLE, LEGAL, AND DOES NOT VIOLATE ANY PUBLIC POLICY

Armstrong mischaracterizes the Agreement as one to suppress evidence. It is not. It is an Agreement designed to put an end to an era of protracted litigation and harassment fostered by Armstrong. None of the bargained-for consideration is or was illegal, and only by outright misrepresentation can Armstrong even argue that this is the case. The Agreement is definite, precise and specifically enforceable under California law. Moreover, nothing in the Agreement violates public policy or the First Amendment rights of anyone. In fact, the Agreement fosters the public policy which uniformly favors private resolution of legal disputes over protracted litigation.

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[4] Joseph Yanny is a former attorney for the Church who attempted to represent the Aznarans in their claims against the Church. He was removed from that case by the Honorable James Ideman, District Court Judge, sua sponte.

A. The Agreement is Legal

Armstrong argues that the Agreement should be voided, because some of the consideration given for the contract, that contained in the non-disclosure provisions, was purportedly illegal. However, this very argument has been rejected by other courts and for good reason. There is absolutely nothing illegal about agreeing to settle a case upon certain terms, including non-disclosure of private facts, and then accepting money as consideration for those promises.[5]

Not only have two judges already held, in this case, that the Agreement's provisions are entirely legal,[6] two other courts have recently upheld similar provisions in agreements entered into with other individuals with whom Church of Scientology entities settled in 1986. In Wakefield v. Church of Scientology of California (11th Cir. 1991) 938 F.2d 1226, 1227, settlement terms requiring confidentiality, which were substantially similar to the terms which plaintiff seeks to enforce here, were upheld by the district court and a criminal contempt citation recommended by the magistrate judge for violations. These decisions were discussed with approval by the Eleventh Circuit Court of Appeals. While the district court files of Wakefield are sealed, the Eleventh Circuit's opinion makes it clear that the District Court considered and approved in full Wakefield's settlement agreement, which contained the very confidentiality provisions against which Armstrong rails:

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[5] Armstrong attempts to characterize the contract as one which can be voided because the consideration he is to give plaintiff - relief from Armstrong's campaign to foment litigation - is not "fair and equitable." Def. Mem. at pp. 5-7. This turns the fifty-year old cases which he cites upside down. The consideration to be examined in this context is the consideration flowing from plaintiff to defendant, not the other way. Quan v. Kraseman (1948) 84 Cal.App.2d 633, 191 P.2d 16; Eichholtz v. Nicoll (1944) 66 Cal.App.2d 67, 151 P.2d 664. Armstrong does not even attempt to argue that the large sum which he received was unfair or inadequate. He argument is that he promised to do something which he has belatedly decided is "illegal." It isn't.

[6] In addition to the Preliminary Injunction presently in place, [Request Ex. A], an earlier court also heard argument and entered a temporary restraining order in March, 1992, when the action was originally filed in Marin County. [Request, Ex. B, C]

> Margery Wakefield and three other plaintiffs alleged that the Church of Scientology of California (the Church) committed various wrongful acts against them. On August 14, 1986, Wakefield, the other plaintiffs, and the Church entered into a settlement agreement which included provisions enjoining Wakefield and the other plaintiffs from discussing, with other than immediate family members, (1) the substance of their complaints against the Church, (2) the substance of their claims against the Church, (3) alleged wrongs the Church committed, and (4) the contents of documents returned to the Church. The district court approved the settlement agreement, sealed the court files, and dismissed the case with prejudice.

Similarly, in McLean v. Church of Scientology of California (11th Cir. 1991) (Slip Op., Ex. S to Motion, at 2, 3, 6) the Church obtained a permanent injunction against Nan McLean from the district court for violating, inter alia, similar confidentiality provisions of a settlement agreement which was upheld by the Court of Appeals.

These decisions - two in this very case - lay waste to Armstrong's arguments that the Agreement's provisions are illegal, void or against public policy. The only courts that have considered these or similar agreements have easily found them to be enforceable.

These provisions are also similar to provisions of a settlement upheld in Hoffman v. United Telecommunications, Inc. (D.Kan. 1988) 687 F.Supp. 1512. Hoffman involved a confidential settlement agreement between a defendant-employer and plaintiff-employee in an employment discrimination case, which prohibited the employee or her counsel from any further participation in the case, except that the employee could testify pursuant to subpoena. The Equal Employment Opportunity Commission (EEOC) moved to have the agreement declared unenforceable as against public policy. The court denied the motion, finding that the "(p)laintiff's interest in recovering monetary compensation in a private settlement . . . outweighs, under the circumstances of this case, any harm to the public policy that encourages cooperation in an investigation of the subject employer." 687 F.Supp. at 1514. Most significantly, the court stated, "Not the least justification of this holding is plaintiff's availability to testify completely and truthfully upon being subpoenaed by the EEOC." Id.

B. The Agreement Does Not Violate Public Policy

Armstrong would have the Court accept a virtually limitless definition of public policy and an unbounded obligation to refuse to enforce as "illegal" any contract arguably in contravention of his open-ended view of public policy. (See, e.g., Def.Mem. at pp. 11-12) In fact, a case erroneously relied on by Armstrong strongly cautions against such indiscriminate invocation of "public policy":

> Many courts have cautioned against recklessness in condemning contracts as being against public policy. Thus it has been said by an English judge that public policy is an unruly horse astride of which one may be carried into unknown paths. . . . The power to invalidate agreements on the ground of public policy is so far-reaching and so easily abused that it should be called into action only in cases where the dangerous tendency clearly and unequivocally appears from the contract itself. Courts are reluctant, therefore, to declare a contract void as against public policy, and will refuse to do so if by any reasonable construction it may be upheld.

Maryland Casualty Co. v. Fidelity & Casualty Co. of New York (1925) 71

Cal.App. 492, 497.[7]

California courts have been reluctant to void contracts on public policy grounds. "'No court ought to refuse its aid to enforce a contract on doubtful and uncertain grounds.'" Moran v. Harris (1982) 131 Cal.App.3d 913, 919-920, 182 Cal.Rptr. 519, 522, quoting Stephens v. Southern Pacific Co. (1895) 109 Cal. 86, 89-90, 41 P. 783. Furthermore, the "burden is on the defendant to show that its enforcement would be in violation of the settled public policy of this state . . . ." Moran v. Harris, p. 920, 182 Cal.Rptr. at 522, quoting Stephens, supra. In addition, "(i)n determining whether the subject of a given contract violates public policy, courts must rely on the state of the law as it existed at the time the contract was made." Moran v. Harris, 182 Cal.Rptr. at 521.

In fact, as Judge Sohigian noted in his preliminary injunction order, public policy favors enforcement of settlement agreements. The law highly favors settlement agreements and they will be upheld by the courts whenever possible. Phelps v. Kozakar (1983) 146 Cal.App.3d 1078, 1082, 194 Cal.Rptr. 872, 874. To hold otherwise would destroy the public's confidence in settlement agreements and the power of the court.[8]

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[7] Though not acknowledged by Armstrong, the court in Maryland Casualty found no public policy violation in the contract there. Consistent with the facts herein, the parties to the agreement in Maryland Casualty had no duty to the third person which could be breached by the agreement. 71 Cal.App. at 497-98, 236 P. 210.

[8] As discussed herein, there is no validity to Armstrong's arguments that certain provisions of the Agreement are not enforceable. However, even if the Court were to find some of the provisions unenforceable, the severability clause, paragraph 16 of the agreement, would still render all the remaining sections enforceable, requiring overruling of Armstrong's general demurrer. Moreover, Armstrong's argument that the Agreement is defective, and all the lawyers involved in reaching the Agreement heinous merely because the Agreement did not vitiate

Armstrong's citations which claim that settlement provisions which provide for confidentiality are "illegal" are misrepresentations of the case law which they cite, and provide no guidance which is relevant here, as a review of just some of the string-cited cases reveals. For example, while Brown v. Freese (1938) 28 Cal.App.2d 608, 618, 83 P.2d 82, 87, does quote language stating that "[a] bargain that has for its consideration the nondisclosure of discreditable facts . . . is illegal," the statement does not even rise to the level of dicta. Thereafter, the Court held that it was treating the contract in question as legal, and then proceeded to find it unenforceable because it contained terms which were vague and uncertain. Id. Such a weak statement from a 1938 case cannot be deemed precedent.

Similarly misrepresented is Williamson v. Superior Court (1978) 21 Cal.3d 829, 836, 148 Cal.Rptr. 39, 43-44. In Williamson, the court dealt with a situation where a party got a co-defendant to withhold damaging testimony of its expert by indemnifying the co-defendant for any judgment it might incur. This agreement between two adversarial co-defendants to suppress specific evidence known to be relevant to the case in order to prevent the plaintiff from recovering was found by the court to violate public policy. Id. at 836, 837, 148 Cal.Rptr. at 43-44. The court referred to the sections of the Penal Code which deal with bribing or preventing someone from attending a trial to place their actions in perspective. Id. fn.3.

Armstrong's reliance on Allen v. Jordanos, Inc. (1975) 52

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plaintiff's right to appeal the Memorandum Decision in Armstrong I is ludicrous. No "plot" was afoot to conceal from any Court plaintiff's intention to seek declaratory relief from that one-sided Decision; indeed, in briefing the Court of Appeal, the Church gave full disclosure of the circumstances, noting for the Court the California law which permits such indemnity agreements.

Cal.App.3d 160, 165, 125 Cal.Rptr. 31, 34 is equally misplaced. In Allen, the court found an agreement illegal which called for withholding of information from a government agency.[9] There is nothing in Armstrong's agreement which requires such withholding of information. In fact, lawful process is a specific, contractual exception to non-disclosure requirements. (Agreement ¶ 7h) What is prohibited is volunteering of information and agitating trouble, not providing information where it is legally required.

Mary R. v. B. & R. Corp. (1983) 149 Cal.App.3d 308, 196 Cal.Rptr. 871, 873, is also distinguishable from this case in crucial respects. There the trial court, in dismissing the action, issued a blanket order to "the parties, their agents or representatives never to discuss the case with anyone." Thus, the court's order prohibited the parties and others, under penalty of contempt, from complying with an administrative or other subpoena which the Division of Medical Quality might have issued or even from complying with subpoena to testify in court. The court specifically emphasized that the Division's "statutory obligation to the medical profession and the public to investigate all complaints of physician misconduct" in California was effectively blocked by the blanket silencing order. Id. at 315, 196 Cal.Rptr. at 875. In stark contrast, the Armstrong Agreement does not interfere with judicial or administrative process. The terms against voluntary cooperation fall far short of an order banning all communications. In addition, no public agency's statutory obligations are hampered in any way by the Agreement.[10]

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[9] In Allen, a major term of the agreement in question involved the employer agreeing not to provide truthful information that the employee was being terminated for theft and dishonesty to enable the employee to collect unemployment benefits to which he would not otherwise be entitled, in exchange for the employee's agreement not to seek arbitration of the charges. Allen v. Jordanos, Inc. 52 Cal.App.3d at 165, 125 Cal.Rptr. at 34.

The agreement in People v. Dean Richard Pic'l (1982) 31 Cal.3d 731 provided that the complainant in a criminal case would "refuse to prosecute." Because the complainant had no control over the prosecution once he had made the complaint, the Court held that the only meaning the contractual term "refuse to prosecute" could have was that the complainant would refuse to testify. Pic'l is irrelevant here because the Agreement does not require Armstrong to refuse to testify.[11]

In short, in the cases cited by Armstrong which did find contractual non-disclosure provisions to be illegal or void for public policy reasons, there was specific evidence needed in connection with a trial or a government investigation of entitlement to benefits which someone had agreed not to divulge under any circumstances. In contrast, the Agreement here specifically recognizes that Armstrong will provide evidence when called upon to do so by legal process in connection with any matter. Such agreements have been upheld by courts as legal, where a party agreed not to voluntarily testify, but testimony pursuant to subpoena was specifically excepted from the agreement.[12] Hoffman v. United Telecommunications, Inc., supra; Wakefield, supra; McLean, supra. Even prior to signing the Agreement, Armstrong was not required to voluntarily furnish testimony for anyone. Furthermore, there is no claim by Armstrong that particular information he had was suppressed as evidence for some specific proceeding. Thus there is simply no similarity between Armstrong's situation and the cases he cites.

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[10] Armstrong's citations to cases for general propositions concerning illegal contracts are, if possible, even more inapposite. Bovard v. American Horse Enterprises (1988) 201 Cal.App.3d 832, 247 Cal.Rptr. 340, Kallen v. Dlug (1984) 157 Cal.App.3d 940, 203 Cal.Rptr. 879, and Russell v. Soldinger (1976) 59 Cal.App.3d 633, 131 Cal.Rptr. 145, involved contracts for, respectively, sale of a drug-paraphernalia factory; fee-splitting between lawyers; and conspiratorial estate-sale bidding by real estate brokers. Each of these contracts was in violation of a clear public policy, expressed by the legislature in the form of penal and professional codes.

[11] Armstrong's additional citations are, if anything, even less applicable to this case than Mary R. and Pic'l. Precision Instrument Manufacturing Co. v. Automotive Maintenance (1945) 324 U.S. 806, for example, concerned a cover-up by parties to a fraud on the United States Patent Office. Fong v. Miller (1951) 105 Cal.App.2d 411 involved a contract concerning profit from illegal gambling, which the court refused to enforce. Neither of these cases involved facts even remotely similar to the facts presented here.

C. The Agreement Does Not Contravene the First Amendment

Armstrong argues vigorously that the plaintiff may not ask the Court to enforce the contract to which he agreed because it would violate his First Amendment right to freely speak. However, it is well-established that individuals may enter into valid contracts which restrict First Amendment rights or other constitutional rights. ITT Telecomm Products Corporation v. Dooley (1989) 214 Cal.App.3d 307, 319, 262 Cal.Rptr. 773, 780 (Free speech rights held waived by contractual nondisclosure agreement); In re Steinberg (1983) 148 Cal.App.3d 14, 20, 195 Cal.Rptr. 613, 617 (Movie maker's First Amendment right to disseminate his movie was limited by agreement to submit movie for editing prior to release); D.H. Overmyer Co. v. Frick Co. (1972) 405 U.S. 174, 185, 187, 92 S.Ct. 775, 782, 783, 31 L.Ed.2d 124 (Debtor may waive rights to prejudgment notice).

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[12] It must also be noted here that Armstrong's contentions that the mutual release agreement violates California Penal Code §136.1 or that the Agreement's terms are criminal are absurd and outrageous. Section 136.1 addresses the situation in which a person offers a bribe to a witness or someone about to be called as a witness in order to procure that person's nonattendance at trial. Here, the Agreement does not provide that Armstrong "shall not attend a trial or other judicial proceeding." To the contrary, it acknowledges the duty to respond to lawful process.

Indeed, Armstrong's argument was recently rejected by the New York Court of Appeals in Trump v. Trump (1992) ___ N.Y. 2d. ___. [Request, Ex. D] The Trumps entered into a post-nuptial agreement describing their rights and duties in the event of divorce. Inter alia, Ivana Trump agreed not to "directly or indirectly publish, or cause to be published, any diary, memoir, letter, story, photograph, interview, article, essay, account or description of any kind whatsoever. . ." concerning Donald or their marriage. Slip Op. at 3. Later, Ivana accepted the large sums which Donald had agreed to pay pursuant to the Agreement, and accepted entry of the terms of the Agreement as judgment. On its own motion, however, the trial court excepted the non-disclosure provisions from the entered judgment. Id. at 4-5. The New York appellate court found this to be an abuse of the trial court's discretion. Id. at 9. Noting that, in resolving litigation, "parties 'may stipulate away statutory, and even constitutional rights,'" id. at 5 (citations omitted), the appellate court reinstated the non-disclosure provisions, noting that nothing in them "offend[s] public policy as a prior restraint on protected speech." Id. at 9 (citations omitted). The Court was careful to note that a non-disclosure agreement done in settlement of litigation did not constitute the "state action" which is a necessary component of prior restraint.

D. The Agreement Is Not Vague Or Ambiguous And Is Specifically Enforceable

Armstrong argues that the Agreement should not be enforced because it would require the Court to be involved in supervision of its performance, relying upon Thayer Plymouth Center, Inc. v. Chrysler Motors Corp. (1967) 255 Cal.App.2d 300, 63 Cal.Rptr. 148. However, Thayer involved the claimed breach of an automobile dealership and distribution contract. The Court refused to decree specific performance because it would be required to be involved in the "impossible task of supervising continuous performance by the parties." 255 Cal.App.2d at 304. That task would include supervising the maintenance of dealership records, the processing of orders, the establishment of prices for new models and potential price changes, rebates to dealers, incentive sales programs, handling of discontinued models, and advertising campaigns. Id. at 304-305. It is not surprising that the court would refuse to be involved in such a supervisory process.

The other authorities relied upon by Armstrong are similarly inapplicable. In Long Beach Drug Co. v. United Drug Co. (1939) 13 Cal.2d 158, 88 P.2d 698, for example, the court refused to decree specific performance of succession of acts consisting of compelling defendant to sell to plaintiff, plaintiff purchasing from defendant, maintenance of retail prices over an indefinite term.

In contrast, the Agreement here does not require a succession of acts. It merely requires Armstrong to refrain from clearly defined conduct. Judge Sohigian had no difficulty in fashioning an injunction that specifically enforced the Agreement. There is no reason to think that, after trial, this Court could not similarly fashion an appropriate permanent injunction.[13]

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[13] There is also no way that the Agreement can by any stretch of the imagination be deemed an improper restraint of trade, as Armstrong claims. (Memorandum at 14) Armstrong has stated in sworn declarations that he is "a philosopher, writer and artist by trade," Ex. 1(f) to Moving Papers, Declaration of Gerald Armstrong, and that his "help" to plaintiff's adversaries is "freely granted." Id. If he is now charging for his services, and calling himself a paralegal, he will not be restrained from performing any paralegal services for anyone -- except that he may not work on that subset of cases involving plaintiff and related entities. Restrictions such as these are part of settlement and employment agreements everywhere, and are easily and routinely enforced.

E. There is No Requirement That a Contract Contain Reciprocal Non-Disclosure Provisions

Finally, Armstrong argues that the Agreement must fail because the provisions which plaintiff seeks to enforce were not reciprocal. This argument is based upon a misapprehension of the doctrine of mutuality of obligation.

In a bilateral contract the two parties must exchange promises representing binding legal obligations to render the contract enforceable. Larwin-Southern California, Inc. v. JGB Investment Co. (1979) 101 Cal.App.3d 626, 637, 162 Cal.Rptr. 52, 57. As consideration for Armstrong's promise not to disclose certain information, the Church paid him a considerable sum of money. This promise in exchange for a payment constitutes mutuality of obligation. Id. (See, e.g., 1 Witkin Summary of Cal. Law (9th ed. 1987) § 228 et seq., pp. 236-238.)

IV. CONCLUSION

For all of the foregoing reasons, plaintiff requests that the Court overrule Armstrong's demurrer, and order him to answer the Complaint forthwith.

Dated: June 25, 1992

Respectfully submitted,

BOWLES & MOXON

By: Laurie J. Bartilson
Laurie J. Bartilson

Andrew H. Wilson
WILSON, RYAN AND CAMPILONGO

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, California 90028.

On June 25, 1992, I served the foregoing document described as PLAINTIFF'S OPPOSITION TO DEFENDANT'S DEMURRER TO PLAINTIFF'S FIRST AMENDED COMPLAINT on interested parties in this action by

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] a true copy thereof in sealed envelopes addressed as follows:

Paul Morantz **BY HAND**
P.O. Box 511
Pacific Palisades, CA 90272

[ ] BY MAIL
  [ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.
  [ ] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondece for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on June 25, 1992, at Los Angeles, California.

[X] **(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on June 25, 1992, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Howard Gutfeld
Type or Print Name

Howard Gutfeld
Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, California 90028.

On June 25, 1992, I served the foregoing document described as PLAINTIFF'S OPPOSITION TO DEFENDANT'S DEMURRER TO PLAINTIFF'S FIRST AMENDED COMPLAINT on interested parties in this action by

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] a true copy thereof in sealed envelopes addressed as follows:

Ford Greene **BY U.S. MAIL**
HUB Law Offices
711 Sir Francis Drake Boulevard
San Anselmo, CA 9490-1949

Graham Berry **BY U.S. MAIL**
Lewis D'Amato, Brisbois & Bisgaard
221 N. Figueroa St.
Suite 1200
Los Angeles, CA 90012

[X] BY MAIL

- [ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.
- [X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondece for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of

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[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Paul Bradford	Paul Bradford
Type or Print Name	Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)